Risk Management, Legal Principles, and Ethical Standards for Association Leaders

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Risk Management, Legal Principles, and Ethical Standards for Association Leaders

• Introduction
  – Overview of key risk management, legal, and ethical issues for national and state association leaders
  – “What do you do?” Scenarios
  – Questions
  – Conclusion
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• Introduction
  – Why are these issues important?
  – How will they assist you in your role as an association leader?
  – What should you do if you have additional questions?
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• Risk Generally
  – Definition of Risk: “uncertainty of a loss, the chance of a loss, or the probability of a loss” financial or otherwise

• Managing Risk
  – Avoidance (not engage in the activity)
  – Retention (insurance deductible)
  – Transfer (contract indemnification/limitation of liability)
  – Sharing (pooled risk agreements)
  – Reduction or modification (behavior, improvements, training)
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• Overview of Risk Management and Legal Issues
  – Association governing documents
  – Insurance
  – Public records
  – Minutes
  – Copyright
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• Overview of Risk Management and Legal Issues
  – Governmental filings
  – Conflicts of interest
  – Apparent authority
  – Employment relations
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- Overview of Risk Management and Legal Issues
  - Finances
  - Subsidiaries
  - Association policies
  - Dues notices
  - Software licensing
  - Disaster preparedness
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• Association Governing Documents
  – Articles of incorporation
  – Bylaws
  – Operating procedures and administrative policies
  – Amendments to governing documents
  – Robert’s Rules
  – State-national agreement
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• State Reporting Requirements
  – Articles of incorporation
    • Annual report/franchise fee/non-stock corporation filing
  – State corporate income tax
  – State tax exemption certification
  – Local sales tax exemption certification
  – State/local real estate tax exemption
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• Federal Tax Applications and Reporting
  – Tax ID Number (EIN)
  – IRS 1023 Instructions (all tax-exempt organizations)
  – IRS 1024 Application (all tax-exempt organizations)
  – IRS Letter of Exemption (877 829-5500)
  – IRS Form 990 (> $200K income or > $500K assets)
  – IRS Form 990EZ (< $200K income or < $500K assets)
  – IRS 990N (< $50K income)
  – UBIT
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• Meeting Agenda and Minutes
  – Board of Directors
  – Executive Committee
  – Committees
  – Task forces
  – Notice of meeting
  – Quorum – attendance – conference call – electronic
  – Standardized agenda and minutes format
  – When, who, where, what
  – Action checklist and follow up
  – Distribution/approval/modification
  – Maintenance
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• Intellectual Property
  – Copyright and trademark
  – Original works – papers, articles, reports, studies, logos, Web site, social media
  – Infringement
  – Permission/license/one-time use
  – Works for hire
  – Assignment of copyright
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• Insurance
  – Liability generally
  – General liability/property loss/damage
  – Association professional liability insurance/director-officer liability insurance
  – Umbrella liability insurance
  – Worker’s compensation insurance
  – Meeting/event cancellation insurance
  – Crime/theft coverage
  – Indemnification – bylaws – exceptions
  – State and federal statutory protections
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• Conflicts of Interest
  – Annual disclosure
  – Meeting disclosure
  – Financial/organizational
  – Recusal/non-participation/non-presence
  – Resignation
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• Antitrust
  – Federal and state statutes – civil and criminal
  – Price-fixing
  – Boycotts
  – Illegal tying
  – Market allocation
  – Notice to members – special and ongoing
  – Intervention – online communications
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- Apparent Authority
  - Spokesperson(s)
  - Use of trademarks, logos, titles
  - Use by members, vendors, etc.
  - Coalitions, endorsements, commendations
  - Web sites, ListServes
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• Employment Issues
  – Employee vs. independent contractor
  – Practical considerations
  – Legal considerations
  – Policy/strategy vs. operations
  – Periodic evaluation
  – Consultants, CPAs, attorneys, etc.
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• Defamation
  – Libel
  – Slander
  – Public figure/non-public figure
  – Individuals
  – Groups
  – Products/services
  – Internal publications/external/publications/Web site
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• Finances
  – Budgeting and reporting
  – Audits
  – Investments
  – Investment policy
  – Fiduciary responsibility
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• Affiliated Groups
  – Education Foundation
  – Political Action Committee – state and federal
  – For profit subsidiary
  – Membership groups
  – Coalitions
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• Contracts
  – Selection of product or service vendor
  – Scope of work
  – Fees
  – Time is of the essence
  – Duration
  – Changes in writing
  – Termination
  – Dispute resolution
  – Warranties/guarantees
  – Insurance/indemnities/limitation of liability
  – Evergreen/renewal
  – Governing law
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• Notifications on Dues Invoice
  – Dues deductibility
  – Lobbying exclusion
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• 12 Key Provisions From ASAE Model Code of Ethics: Focus on…
  – Duty of obedience and compliance
  – Due diligence
  – Confidentiality
  – Mutual respect
  – Competence
  – Conflict-of-interest
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• Key Provisions From ASAE Model Code of Ethics:
  – Leaders will at all times obey all applicable federal, state, and local laws and regulations and will provide or cause to provide the full cooperation of the association when requested to do so by those institutions and their persons set in authority as are required to uphold the law.
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• Key Provisions From ASAE Model Code of Ethics:
  – Leaders will conduct the business affairs of the association in good faith and with honesty, integrity, due diligence, and reasonable competence.
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• Key Provisions From ASAE Model Code of Ethics:
  – No Leader shall share, copy, reproduce, transmit, divulge or otherwise disclose any confidential information related to the affairs of the association and each member of the leadership group will uphold the strict confidentiality of all meetings and other deliberations and communications of the leadership group.
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• Key Provisions From ASAE Model Code of Ethics:
  – Leaders will exercise proper authority and good judgment in their dealings with association staff, suppliers, and the general public and will respond to the needs of the association's members in a responsible, respectful, and professional manner.
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• Key Provisions From ASAE Model Code of Ethics:
  – No leader will use any information provided by the association or acquired as a consequence of their service to the association in any manner other than in furtherance of his or her duties.
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• Key Provisions From ASAE Model Code of Ethics:
  – No leader will misuse association property or resources and will at all times keep the association's property secure and not allow any person not authorized by the leadership group to have or use such property.
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• Key Provisions From ASAE Model Code of Ethics:
  – Each leader will use his or her best efforts to regularly participate in professional development activities and will perform his or her assigned duties in a professional and timely manner pursuant to the leadership group’s direction and oversight.
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• Key Provisions From ASAE Model Code of Ethics:
  – Leaders must act at all times in the best interests of the association and not for personal or third-party gain or financial enrichment. When encountering potential conflicts-of-interest, board members will identify the conflict and, as required, remove themselves from all discussion and voting on the matter. Specifically, the leadership group members shall follow these guidelines:
Key Provisions From ASAE Model Code of Ethics:

- Avoid placing (and avoid the appearance of placing) one's own self-interest or any third-party interest above that of the association; while the receipt of incidental personal or third-party benefit may necessarily flow from certain association activities, such benefit must be merely incidental to the primary benefit to the association and its purposes;
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• Key Provisions From ASAE Model Code of Ethics:
  – Do not abuse membership in leadership group by improperly using role as leader, or the association's staff, services, equipment, resources, or property, for personal or third-party gain or pleasure; leadership group members shall not represent to third parties that their authority as a leadership group member extends any further than that which it actually extends;
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• Key Provisions From ASAE Model Code of Ethics:
  – Do not engage in any outside business, professional, or other activities that would directly or indirectly materially adversely affect the association.
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• What do you do?
  – You learn that your Society’s IRS Letter of Determination letter has been lost and is not in the Society files.
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• What do you do?
  – You become president of your Society and learn that the Society has not filed its annual report with the Secretary of State for the past 5 years.
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• What do you do?
  – In reviewing your Society’s meeting minutes for the past several years, you see that the minutes are either a transcript of all discussions or a comprehensive narrative of the meeting.
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• What do you do?
  – In becoming the Society treasurer, you learn that there is an inconsistent practice between fiscal years regarding officer and staff reimbursement, submission of receipts on a timely basis, and approval of expenses, with little guidance in place.
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• What do you do?
  – In becoming chairman of the Society Products and Services Task Force, you learn that there is no process in place for determine the qualifications of competing product or service vendors who seek your Society’s endorsement or commendation.
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• What do you do?
  – In the most recent Board of Directors meeting, the Society treasurer distributes a document containing the names of all employees along with their current salaries and ages.
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• What do you do?
  – In becoming treasurer of the Society, you are advised by a professional engineer colleague who is considering membership in the Society that the Society has not provided him with a copy of the most current IRS 990 Form which he requested that was filed the previous year with the Internal Revenue Service.
What do you do?

You are a member of a professional practice committee in your Society and one of your potential competitors who is on the Society committee is starting a new business. He is in the process of creating a business pricing structure and asks you what your firm’s hourly rate is for engineering services.
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• What do you do?
  – A professional competitor of yours in your state proposes that you only market your services in certain towns and in exchange he will only market his services in certain towns in the state.
• What do you do?
  – A competitor of yours (Jones), referring to a third competitor (Smith), says “let’s agree not to use Smith and discourage other colleagues from using Smith because Smith’s fees are lower than what should customarily be charged.”
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• What do you do?
  – You become the treasurer of your Society and you learn that the Society’s one-person staff requires extensive instruction and direction. The Society president currently directs and controls the staff person, including how, when, and where the work is performed (e.g., in the Society office), provides the equipment to the staff, and directs all purchases by the staff. The one-person staff is retained as an independent contractor without a formal written contract.
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• What do you do?
  – You are elected president-elect and learn that the Society has several inactive committees without clear goals and direction.
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• What do you do?
  – You are the treasurer of the Society and learn that the Society magazine has used the same printer for the past 15 years.
• What do you do?
  – You are the president-elect and learn that the Society has a contract with a hotel for next year’s annual meeting with unrealistically high meeting room and sleep room guarantees.
• What do you do?
  – You are the president and learn that an upcoming issue of the Society publication will contain a reprint of an article first published in another engineering society publication.
• What do you do?
  – You are the Society annual meeting chairman and learn that the Society will need liability insurance coverage for a special tour to be conducted at an engineering facility.
• What do you do?
  – You are a member of your State Society board and also a member of another state engineering association board. A public policy issue arises and the State Society and the engineering association have conflicting positions on the public policy issue.
What do you do?

– You are a chairman of a Society government relations committee that is considering a position statement on licensure legislation. You learn that one of the members of the Society government relations committee is making statements that the Society has taken a position in support of the licensure legislation when in fact the issue is still being debated by the Society Board of Directors.
• What do you do?
  – You are the president of your Society and you learn that a member and a nonmember plan to attend the upcoming Board meeting and raise controversial issues not on the Board’s agenda.
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• What do you do?
  – You are the treasurer of your Society’s education foundation and you learn that the assets of the foundation are invested in an aggressive growth mutual fund.
• What do you do?
  – You are the new president of your Society and in order to conserve resources and increase efficiency and convenience, your Board of Directors would like to conduct some of its meetings via conference call.
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• What do you do?
  – You are a member of the board of the State Society and learn that due to serious differences in management philosophy, the association has terminated the chief staff executive. You receive a draft e-mail from the Society president mentioning the name of the employee and indicating that the employee was terminated for insubordination and asking your thoughts on the draft e-mail.
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• What do you do?
  – You are the president of your Society and you call a meeting, but when the meeting convenes, you do not have a quorum.
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• What do you do?
  – You are the president-elect of your Society and the Society is planning an annual membership directory.
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- Questions
- Wrap-up
- Thank you!